

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In The Matter of)
)
Advanced Television Systems and)
Their Impact Upon the Existing)
Television Broadcast Service)
)
Petition for Rulemaking to Create) RM-9260
a New "Class A" Television License)

To: The Commission

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Comments of J. Rodger Skinner, Jr.

On September 30, 1997, the Community Broadcasters Association ("CBA") filed a petition for rulemaking requesting the creation of a new "Class A" television station, as described in "Appendix A" in that petition. On March 18, 1998 the CBA filed an amendment to that petition for rulemaking, substituting a new "Appendix A", which describes the creation of a new "Class A" television station. On April 21, 1998 the Commission issued a Public Notice assigning the above mentioned petition a rulemaking number RM-9260 and establishing a deadline for comments of May 22, 1998 and reply comments June 8, 1998. Thus, these comments are timely filed.

1. Following is a brief background of this commenter. I participated in the rulemaking that created the Low Power Television ("LPTV") service back in 1980 and I have been a Commission LPTV licensee since 1988. Also, as president of TRA Communications Consultants, Inc., I have filed numerous LPTV applications for clients nationwide since 1980, resulting in the grant and construction of numerous LPTV stations across the nation. I have also participated in efforts to enhance the LPTV broadcast service on several occasions since

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1980, most of which have been turned down by the Commission. One notable exception is the granting of four-letter callsigns, albeit with a "LP" suffix, to LPTV stations. I have owned and operated W27AQ (Channel 27) Fort Lauderdale, FL since the CP was granted in 1988 and put on the air in April 1989 to present. I have pending now before the Commission an application to relocate Channel 27 to Channel 48 at a different antenna site, as a result of displacement by a digital station which has already been granted its construction permit. This will require a complete re-build of the station including a new transmitter, antenna, transmission line and other associated equipment at great expense. Having absorbed the high cost of the initial construction, I am now faced with an even greater cost of moving to a new channel at a new antenna site, with tower site rent nearly three times the amount of the currently licensed site. This antenna site move is necessary to avoid interference per the Commission's Sixth Report & Order in the advanced television proceeding (MM Docket No. 87-268).

2. One could argue that any previously licensed LPTV station should not be subject to such displacement and comments made herein should not be construed to diminish that position, should legal action become necessary in the future. The excellent service provided by LPTV stations is a matter of record and need not be reiterated here. Realizing the intricate problem facing the Commission in giving each full-power television station a second channel on which to build a digital television station, some displacement of LPTV stations, we were told, is unavoidable, given the "secondary status" of LPTV stations as compared to "primary status" of full-power television stations. Since the Commission released its final digital "allocation table", released February 24, 1998, the time is now to act on giving some

protection to those LPTV stations that remain or are able to avoid displacement by moving to another channel. In requesting relief, described herein as "Class A" status, to this limited number of LPTV licensees, I do not wish to detract from my view that all LPTV and translator facilities should either be protected or, if displaced, remunerated in some manner for the fair market value of their station. The Commission has stated on more than one occasion that the subject of remuneration for displaced LPTV stations will be dealt with in a future proceeding.

3. While I am in general agreement with the creation of a "Class A" class of television stations that will enjoy "primary status" from the date of application forward, there are some provisions of the instant petition for rulemaking that I feel are unfair and need to be changed. In particular, I see no need or evidence provided to support the position of requiring the station applying for "Class A" status to have originated three hours per week of local programming for a period of three months prior to its "Class A" application. The Commission, in recent years of deregulation, has gotten away from mandating any program requirements, local or otherwise. It is inconsistent to require such in this instance. Should however, the Commission find it advisable to have a certain amount of locally produced programming, then the station applying for "Class A" status should have six months from the time of its application for "Class A" status to have such programming in place on the station. Creation of such local programming is both time consuming and expensive and is a substantial burden on a LPTV licensee, especially if said licensee has not produced such programming in the past. Such stations will have to acquire additional equipment and quite likely more personnel to

produce this local programming. Although some LPTV stations currently provide local programming, stations that do not should not be penalized in any way. Thus, six months is a reasonable time frame to allow stations seeking "Class A" status to create such local programming, if mandated by the Commission. A station not now airing such local programming, or a new station just signing on the air, could certify that it will meet any such local programming requirements, within the six month time limit, in its application for "Class A" status.

4. There is some concern on the part of this commenter that certain LPTV stations, under terms in this instant petition for rulemaking, may try to take advantage of other LPTV stations and/or translators and seek a comparative advantage in the search for replacement channels for those displaced LPTV and translator stations and in applying for upgrade to "Class A" status. In particular, in the proposed new Section 73.627 (d) in the petition's Appendix A (revised March 1998), the last sentence should be deleted, which now reads "Applications proposing no change in channel or increase in coverage area will not be subject to mutually exclusive applications". This innocent sounding sentence gives an unfair advantage to LPTV stations seeking "Class A" status that are fortunate enough not to have had to move to another channel to avoid displacement. As written, it gives an unfair and unreasonable advantage to a LPTV station that does not need to change channel to avoid displacement by a digital station, by saying that its application for "Class A" status "will not be subject to mutually exclusive applications". It is patently unfair that a LPTV station that is forced to incur the enormous expense of moving to a new channel to avoid displacement have the

additional disadvantage of losing out in a bid for “Class A” status on a replacement channel. This contrived advantage seeks to differentiate between otherwise equal LPTV stations and should not be allowed by the Commission. This unfair scenario could develop with the wording in the instant petition for rulemaking and is good cause for careful consideration by the Commission. For instance, suppose a LPTV station, not needing a channel change, applies for “Class A” status. Another LPTV station that will be displaced by a digital station takes longer to find a replacement channel and apply for “Class A” status. The first station having received “Class A” status now uses its superior “primary service” position to apply for the channel that the other LPTV station was applying for as its replacement channel. It gets the new channel by invoking its “primary status” as a “Class A” station, which may represent an increase in its coverage area, and the displaced LPTV is left without a channel. If the displaced LPTV then applies for the channel relinquished by the “Class A” LPTV station, it would then be subject to competing applications and face a FCC mandated “auction”. Likewise, any language relating to providing local programming for three months prior to applying for “Class A” status must be stricken, since it provides an unfair advantage over new stations, translators converting to local origination for the first time or stations that have not in the past aired such programming. Indeed, the Commission must take care to preclude any language that gives one LPTV station an unfair advantage over another in seeking either a replacement channel or “Class A” status. For this reason, the last sentence in the petition’s Appendix A (revised March 1998) Section 73.627(g) should be deleted, since it attempts to give an unfair preference to a “Class A” LPTV station over a “non-Class A” LPTV station when both are seeking a replacement channel due to interference

caused to a digital television channel. The only exception to this rule should be the case where a LPTV station threatened with displacement was able to file immediately for a replacement channel when the displacing digital station had already applied for or received its construction permit, as recently permitted by the Commission. In fairness, the Commission should also forbid a "Class A" station to displace a standard LPTV or translator station when seeking to convert from NTSC to digital. The "Class A" status should offer only protection from displacement and should not confer the privilege to displace any LPTV or translator station either when seeking a NTSC replacement channel or digital channel. With this concept of fairness in mind, the Commission should amend any sections or language of the petition that does not meet this general fairness test. There is absolutely no reason why one LPTV station should be able to upgrade to "Class A" status and achieve an advantage over any other class of LPTV or translator station.

5. In several places in the petition it mentions a "Class A" station's "principal city grade contour". Due to the lower power levels of "Class A" stations, as compared to full-power television stations, sections of the rules that refer to coverage of the city of license by "city grade contour" should not apply. In the petition's Appendix A (revised March 1998) proposed new Section 73.627 (g) the wording needs to be changed to -

"(g) A Class A television station shall be protected from interference within its Grade-B contour as defined in Section 73.683(a) of the rules, except from stations (including low power television and television translator stations) with facilities that were authorized on or prior to the date of filing of the Class A application and stations authorized in conformance with Section 73.622(f). - - -

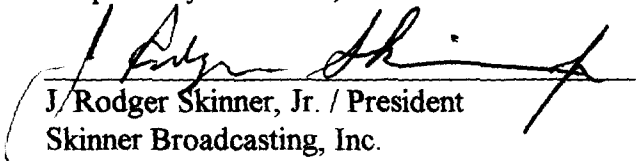
The last sentence of this paragraph (g) above should be deleted since it attempts to give an

unfair preference to a "Class A" LPTV station over a "non-Class A" LPTV station when both are seeking a replacement channel due to interference caused to/from a digital television channel. Delete the sentence that reads " An application for a change of channel filed by a Class A television station to avoid interference that would be caused to or received from a full power digital television station based on the Class A station's authorized facilities shall be given priority over an application for a change of channel by a low power television or television translator station". This is exactly the type of unfair and divisive language to avoid as pointed out above in these comments.

6. If "Class A" status is used only as a defensive mechanism to prevent displacement of LPTV stations, rather than also as a mechanism to unfairly displace other LPTV or translator stations, then adoption of this concept will serve the public interest. For the reasons stated above, I urge the Commission to act promptly to create a "Class A" television class license as outlined above.

May 19, 1998

Respectfully submitted,



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CERTIFICATE OF SERVICE

I, J. Rodger Skinner, Jr. , do hereby certify that a true and correct copy of the foregoing "Comments on RM-9260" was sent via first class mail, this 19th day of May, 1998, to the following parties:

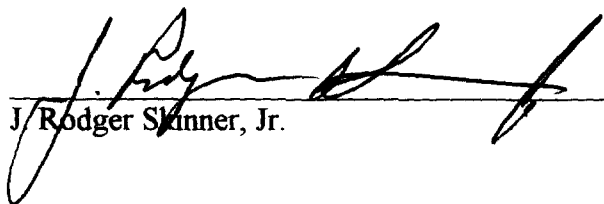
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